

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS J. CAPANO,

Petitioner,

V.

Civ. Act. No. 06-58-***

THOMAS L. CARROLL,

Warden, and **JOSEPH R. BIDEN, III**,
Attorney General for the State of Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answering brief. In support thereof, respondents state the following:

1. The petitioner, Thomas J. Capano, has applied for federal habeas relief, challenging his 1999 conviction by a Delaware Superior Court jury for first degree murder. D.I. 1. By the terms of the Court's order of July 30, 2007, an answering brief was due to be filed on July 31, 2007.

2. Counsel for respondents have substantially completed the answering brief. Counsel, however, were unable to finish the brief. Last minute changes to the draft that had been prepared, and the need to finish the table of citations, necessitate additional time to file the answering brief.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondents' workload" in determining the period of time that should be allowed

to answer the petition.

4. This is respondents' sixth request for an extension of time to file an answering brief.

5. Respondents submit that an extension of time to and including August 2, 2007 in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers
Chief of Appeals Division
Del. Bar. ID No. 2210

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Del. Bar. ID No. 3759

Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

DATE: August 1, 2007

RULE 7.1.1 CERTIFICATION

I hereby certify that counsel for the petitioner, Joseph M. Bernstein, Esquire, was not available when counsel for respondents attempted to contact him, and thus counsel for respondents are unaware of Mr. Bernstein's position as to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: August 1, 2007

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Civ. Act. No. 06-58-***

THOMAS L. CARROLL,

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Attorney General for the State of Delaware,

Respondents.

ORDER

This ____ day of _____, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answering brief shall be filed on or before
August 2, 2007.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF which will send notification of such filing to:

Joseph M. Bernstein, Esq.
800 North King Street, Suite 302
Wilmington, DE 19801

/s/ Elizabeth R. McFarlan
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